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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

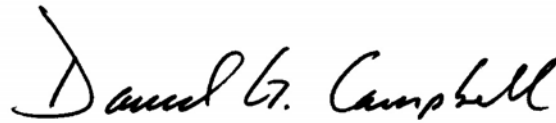
Irwin Financial Corporation, an Indiana corporation; and Irwin Mortgage Corporation, and Indian corporation,)	No. CV-08-631-PHX-DGC
)	
Plaintiffs/Counterdefendant,)	ORDER
)	
vs.)	
)	
E.M.P.P., Inc., an Arizona corporation,)	
)	
Defendant/Counterclaimant.)	
)	

Irwin Mortgage Corporation has filed a motion to dismiss EMPP's counterclaim and an alternative motion for a more definite statement. Dkt. #15. EMPP has responded by filing an amended counterclaim. Dkt. #21.

Because a motion to dismiss is not a "responsive pleading" within the meaning of Rule 15 of the Federal Rules of Civil Procedure, EMPP was entitled to file its amended counterclaim as a matter of course. *See* Fed. R. Civ. P. 15(a); *Allwaste, Inc. v. Hecht*, 65 F.3d 1523, 1530 (9th Cir. 1995) (citing *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). In light of the amended counterclaim, the Court will deny the motion to dismiss the original counterclaim and the alternative motion for a more definite statement as moot.

1 **IT IS ORDERED** that Irwin Mortgage Corporation's motion to dismiss counterclaim
2 and alternative motion for more definite statement (Dkt. #15) are **denied** as moot.

3 DATED this 9th day of September, 2008.

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8 David G. Campbell
9 United States District Judge
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